IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

RUTH ROMANOWSKI PLAINTIFF

VS. NO. 1:94CV213-D-D

AMERICAN COLLOID CO. DEFENDANT

MEMORANDUM OPINION

By memorandum opinion and order dated January 2, 1996, this court determined that it would be infeasible to order reinstatement of the plaintiff, Ruth Romanowski, to her former position with the defendant, American Colloid Co. After discussing the basis for that finding, this court elaborated that front pay should be awarded the plaintiff in an amount to be determined after both parties submitted sufficient record evidence. The parties have complied by supplementing the record and the issue is ripe for determination.

DISCUSSION

The purpose of front pay is to compensate the plaintiff for lost future wages and benefits. Burns v. Texas City Refining, Inc., 890 F.2d 747, 752 (5th Cir. 1989). An award of front pay, although in the form of monetary relief, is essentially an equitable remedy. Deloach v. Delchamps, Inc., 897 F.2d 815, 824 (5th Cir. 1990). Thus, the amount of any such award is within the trial court's discretion and will only be reversed for an abuse of that discretion. Id.; Reneau v. Wayne Griffin & Sons, Inc., 945

F.2d 869, 870 (5th Cir. 1991).

Romanowski asserts that in order for her to be made whole, which is the purpose of Title VII,[1] American Colloid owes her front pay in the amount of approximately $437,334.12.[2] Romanowski reached this number by subtracting her present income ($11,440) from what she made at American Colloid before her termination ($23,362.56) which demonstrates an annual loss in income of $11,922.56. She also originally added to this figure $1,536 of lost insurance contribution paid by American Colloid. However, as American Colloid points out in its Response and Romanowski later concedes, such inclusion is improper under Pearce v. Carrier Corp., 966 F.2d 958, 959 (5th Cir. 1992). See also Purcell v. Seguin State Bank & Trust Co., 999 F.2d 950, 960 (5th Cir. 1993). A plaintiff may only recover "those expenses actually incurred by either replacement of the lost insurance or occurrence of the insured risk." Pearce, 966 F.2d at 959. Romanowski neither suffered an insured risk nor purchased substitute coverage since

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[1]The relevant federal statute authorizes a court "to order such affirmative action as may be appropriate, which may include . . . reinstatement of employees." 42 U.S.C. § 2000e-5(e). The Fifth Circuit has further held that "if reinstatement is not feasible, front pay is the appropriate award." Deloach v. Delchamps, Inc., 897 F.2d 815, 822 (5th Cir. 1990). "Front pay is awarded to meet the goal of Title VII to make whole the victims of discrimination." Floca v. Homcare Health Servs., Inc., 845 F.2d 108, 112 (5th Cir. 1988).

[2]This amount would be in addition to $50,000 awarded Romanowski by a jury on November 9, 1995 before this court.

she became eligible for coverage under her husband's insurance policy. As such, costs of insurance should not be included in the front pay calculations.

The plaintiff then took the figure of nearly $12,000--her estimated loss in income--and worked it through a present value table for twenty (20) years. See Shull Aff., January 11, 1996, att. Plaintiff's Request For Front Pay. Romanowski argues that twenty (20) years is an appropriate time period since she is thirty-nine (39) years old and intends to work for at least twenty (20) more years. American Colloid asserts that such a time frame is arbitrary and would allow the plaintiff to collect a windfall.

"Calculations of front pay cannot be totally accurate because they are prospective and necessarily speculative in nature. The courts must employ intelligent guesswork to arrive at the best answer." Reneau, 945 F.2d at 868 (citations omitted); Shirley v. Chrysler First, Inc., 970 F.2d 39, 43 (5th Cir. 1992). However, the amount of the award may not be set in a purely arbitrary manner. Factors the Fifth Circuit has listed as useful include "the length of prior employment, the permanency of the position held, the nature of work, the age and physical condition of the employee, possible consolidation of jobs and the myriad other non-discriminatory factors which could validly affect the . . . post-

discharge employment relationship." Reneau, 945 F.2d at 871.[3]

In the case sub judice, Romanowski has presented evidence of the wages she earned before her termination and what she is earning in her present position. The difference between the two is approximately $11,922.56.[4] She also asserts that she is earning as much as she will be able to. Romanowski Aff., January 11, 1996. Thus, plaintiff asks for front pay to be awarded over twenty (20) years, approximately the remainder of plaintiff's work life.[5]

The defendant, American Colloid, submits that plaintiff's suggested present value figure is "meaningless, erroneous,

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[3]The Reneau Court noted that the evidence showed what the plaintiff's wages were before termination, what she collected in unemployment compensation and her income earned after termination. The court held that such information constituted "substantial evidentiary support for calculating a front pay award." Reneau, 945 F.2d at 870.

[4]Plaintiff originally asserted that her annual lost earnings amounted to $13,458.56. See Shull Aff., January 11, 1996. Plaintiff's expert reached this number after adding $1,536 to the wage difference as lost insurance contribution. Plaintiff later conceded that costs of insurance were improperly included in the front pay calculation and limited her estimate of annual lost earnings to $11,922.56. See Plaintiff's Supp. Report of Cabell Shull.

[5]In his first affidavit, plaintiff's expert calculated an award of front pay over twenty (20) years totaling a present net cash value of $437,334.12. Shull Aff., January 11, 1996. Admitting that this figure was incorrect because it included the value of lost insurance benefits, plaintiff submitted a supplemental response of her expert without the inclusion of the fringe benefit. However, the supplemental response only estimates an award over a period of ten (10) years. Plaintiff's Supp. Report. The court, therefore, has no record evidence before it of the correct amount of lost income estimated over twenty (20) years and reduced to its present net value.

exorbitant, ridiculous and contrary to legal precedent." Def.'s Response at 2. The focal point of American Colloid's attack is the length of time suggested by Romanowski over which this court should award front pay. The defendant submits that an award over twenty (20) years is in excess of this court's discretion and far to speculative. The undersigned agrees. "If the court awards front pay for the remainder of the plaintiff's working life, it must presume the plaintiff would have remained in the defendant's employ all during that time. The longer the front pay period, the more speculative the front pay award." Burns, 890 F.2d at 753 n.4 (holding lower court abused discretion with front pay award of $151,718.40).

Furthermore, American Colloid produced uncontested evidence tending to indicate the instability of the bentonite industry. Alexander Aff., January 24, 1996. In addition to such drastic fluctuations in the market and other evidence produced at trial pertaining to Romanowski's working relationships, plaintiff failed to provide substantial evidence indicating she would remain employed with American Colloid for the remainder of her working life. The court is likewise unconvinced that Romanowski's earned income will remain stagnant for the next twenty (20) years. Surely she can expect to receive a pay raise or change jobs within the next two decades. Due to the evidence in the record, or more precisely the lack thereof, the court refuses to award front pay

for the suggested twenty (20) years.

The question then becomes what amount of front pay equity dictates the court award Romanowski. It appears that the longest period the Fifth Circuit has expressly approved for front pay is five (5) years. See Deloach, 897 F.2d at 822 (held award covering five year period within court's discretion); Shirley, 970 F.2d at 44-45 (upholding two-year front pay award); cf. Reneau, 945 F.2d at 871 (noting that on remand for consideration of front pay award, district court was not "bound to any particular award for any set period of time"). The undersigned is of the opinion that even an award spanning five (5) years is too speculative under these facts. The relief awarded should be limited to a two year time period. That amount is approximately $24,978.12.[6] Beyond that, any amount would be entirely too speculative on the court's behalf.[7]

American Colloid also asks that any amount awarded be reduced according to equity due to Romanowski's poor work record. The court declines to do so. Front pay may be denied or reduced when

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[6]This amount is based on the present value table (Table 1-C) provided by plaintiff's expert. See Plaintiff's Supp. Report of Cabell Shull. The defendant presented no expert evidence to dispute the calculations of Professor Shull.

[7]The defendant, in its Response, noted the similarities between the facts of the case sub judice and those in Shirley v. Chrysler First, Inc., 970 F.2d 39 (5th Cir. 1992). Def.'s Mem. at 7-8. In that case, Judge Senter also awarded the plaintiff front pay over two years. American Colloid noted that if this court granted relief over two years, "[s]uch an award would be entirely consistent with the amount awarded by Judge Senter in Shirley." Def.'s Mem. at 8. The undersigned agrees.

the employee fails to mitigate damages by seeking other employment. Reneau, 945 F.2d at 870; Hansard v. Pepsi-Cola Metro. Bottling Co., 865 F.2d 1461, 1470 (5th Cir.), cert. denied, 493 U.S. 842, 110 S. Ct. 129, 107 L.Ed.2d 89 (1989). Romanowski introduced into evidence by affidavit substantial efforts she made in attempting to find other employment after her termination by defendant. Romanowski Aff., November 21, 1995. Equity applauds such diligent efforts to locate other employment and does not dictate reduction under these facts for failure to mitigate. Indeed, American Colloid did not challenge Romanowski's assertion that she met her duty to mitigate damages. Furthermore, American Colloid cited no authority for its equitable argument that the court should rely on Romanowski's poor work record to reduce the award. Although it may be within the court's discretion to comply with defendant's request, the court declines to do so.

CONCLUSION

Previously the court ordered that front pay be awarded plaintiff, Ruth Romanowski. After submission of briefs and evidence, the court is of the opinion that front pay should be awarded Romanowski in the amount of $24,978.12.

A separate order in accordance with this opinion shall issue this day.

THIS _____ day of February, 1996.

United States District Judge

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ORDER GRANTING AMOUNT OF FRONT PAY

Pursuant to a memorandum opinion entered this day, the court upon due consideration of Plaintiff's Request For Front Pay, finds said Request partially well taken and an amount of front pay shall be awarded as set out below.

It is therefore ORDERED that:

1) Plaintiff Ruth Romanowski be, and is hereby, AWARDED front pay in the amount of $24,978.12.

All memoranda, depositions, affidavits and other matters considered by the court in setting the amount of the front pay award are hereby incorporated and made a part of the record in this cause.

SO ORDERED, this _____ day of February, 1996

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United States District Judge